# CITY OF SAN JOSÉ, CALIFORNIA



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**City Clerk** 

STATE OF CALIFORNIA) COUNTY OF SANTA CLARA) CITY OF SAN JOSÉ)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San José, in said County of Santa Clara, and State of California, do hereby certify that **Ordinance No. 29484**, the original copy of which is attached hereto, was passed for publication of title on the **9th day of September 2014**, was published in accordance with the provisions of the Charter of the City of San José, and was given final reading and adopted on the **September 23, 2014**, by the following vote:

AYES:

CAMPOS, CHU, CONSTANT, HERRERA, KALRA, KHAMIS,

LICCARDO, OLIVERIO, ROCHA; REED.

NOES:

NONE.

ABSENT:

NGUYEN.

ABSTAINED:

NONE.

VACANT:

NONE.

Said ordinance is effective as of October 24, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San José, this **30th day of September 2014.** 

(SEAL)

CITY CLERK & EX-OFFICIO CLERK OF THE CITY COUNCIL

#### **ORDINANCE NO. 29484**

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 20.100.180, 20.100.220, 20.100.630, 20.100.800, 20.100.820, 20.100.830, 20.100.920, 20.100.940 AND 20.100.950 OF CHAPTER 20.100 OF TITLE 20 AND SECTION 21.04.140 OF CHAPTER 21.04 OF TITLE 21 AND SECTIONS 21.07.040, 21.07.050, 21.07.060 AND 21.07.080 OF CHAPTER 21.07 OF TITLE 21 OF THE SAN JOSE MUNICIPAL CODE TO STREAMLINE THE CITY'S ENVIRONMENTAL CLEARANCE AND PERMITTING PROCESSES

**NOW, THEREFORE,** BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

<u>SECTION 1.</u> Section 20.100.180 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

#### 20.100.180 Environmental Review

If required by the Director, every application shall be accompanied by an application for, or verification of, environmental clearance or exemption for the project in accordance with Title 21 of the San José Municipal Code. Notwithstanding any provision in any other Section, Part, Chapter or Title of this Code, the City Council shall be the initial decision making body on the application if that application requires certification of an environmental impact report for environmental clearance, unless the project as proposed includes all mitigation measures identified in the draft environmental impact report for the project as necessary to reduce the impacts of the project to a less than significant level.

<u>SECTION 2.</u> Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

## 20.100.220 Appeal - Hearing Body

Decisions on permits or approvals pursuant to this Chapter are subject to appeal as set forth in Table 20-60 which lists the initial decision maker and the decision making body which will hear any appeal.

Table 20-260 Appeal Hearing Body			
Application	Initial Decision Making Body 1	Appeal Decision Making Body 2	
Administrative Permit	Director of Planning	No Appeal	
Site Development Permit	Director of Planning	Planning Commission	
Site Development Permit - Projects within downtown districts and exceeding 150 feet and FAR of 6:1	Director of Planning	City Council	
Single-family House Permit	Director of Planning		
Administrative decision	Director of Planning	No Appeal	
Director's hearing	Director of Planning	Planning Commission	
Planned Development Permit	Director of Planning	Planning Commission	
Special Use Permit	Director of Planning	Planning Commission	

Special Use Permit – for schools that are elementary or secondary (public or private), Post Secondary, Trade and Vocational, or driving (class C & M license) in the PQP Public/Quasi-Public Zoning District.	Director of Planning	City Council
Special Use Permit – for church/religious assembly in the PQP Public/Quasi-Public Zoning District.	Director of Planning	City Council
Special Use Permit – for privately- operated museums, libraries, parks, playgrounds, or community centers in the PQP Public/Quasi-Public Zoning District.	Director of Planning	City Council
Conditional Use Permit	Planning Commission	City Council
Conditional Use Permit - Stadium, more than 2,000 seats including incidental support uses	City Council	No Appeal
Conditional Use Permit - Drinking Establishments with an approved maximum occupancy load of over 250 persons that operate between 12:00 midnight and 6:00 a.m.	City Council	No Appeal
Conditional Use Permit involving off- premises sale of alcoholic beverages requiring a determination under Chapter 6.84 where findings required by Planning Commission under Section 6.84.030.B.1. through 4. cannot be made	City Council	No Appeal
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission

Sidewalk Café Permit	Director of Planning	City Council
Tree Removal Permit	Director of Planning	
Administrative decision	Director of Planning	No Appeal
Director's hearing	Director of Planning	Planning Commission
Zoning Code Verification Certificate	Director of Planning	No Appeal

- 1. The City Council is the Initial Decision Making Body for a project that requires certification of an environmental impact report for environmental clearance unless the project as proposed includes all mitigation measures identified in the draft environmental impact report for the project as necessary to reduce the impacts of the project to a less than significant level..
- 2. The City Council is the Appeal Decision Making Body for all projects in which appeals have been filed for both approval of the project under this Chapter and environmental clearance for the project under Title 21 of this Code.

SECTION 3. Section 20.100.630 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

#### 20.100.630 Findings

A. The Director, the Planning Commission or City Council, as set forth in Table 20-260, shall grant the Site Development Permit after review of project design, only if all of the following findings are made:

- 1. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.
- 2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.
- 3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.
- 4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.
- 5. Traffic access, pedestrian access and parking are adequate.
- 6. The application is either consistent with the General Plan or counterbalancing considerations justify the inconsistency.
- B. The Director, the Planning Commission, or the City Council, as set forth in Table 20-260, shall deny the application where the information submitted by the applicant or presented at the public hearing fails to satisfactorily substantiate such findings.

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<u>SECTION 4.</u> Section 20.100.800 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

#### 20.100.800 Applicability

The provisions of this Part apply to and govern the issuance of all permits made subject to the provisions of this Part. All permits governed under this Part shall hereinafter be referred to as Special Use Permits, and shall be issued by the Director or by the Planning Commission on appeal from a decision of the Director, except that the City Council shall issue certain Special Use Permits as identified in Section 20.100.220, Table 20-60 and for any project that requires certification of an environmental impact report for environmental clearance unless the project as proposed includes all mitigation measures identified in the draft environmental impact report for the project as necessary to reduce the impacts of the project to a less than significant level.

<u>SECTION 5.</u> Section 20.100.820 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

#### 20.100.820 Findings

- A. In addition to any findings required by any other section of this Title, the Director,
  Planning Commission or City Council as appropriate, may issue a Special Use
  Permit only if all the following findings that:
  - 1. The proposed use at the location requested will not:
    - Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

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- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
- c. Be detrimental to public health, safety, or general welfare; and
- 2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and
- 3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
  - b. By other public or private service facilities as are required.
- B. The Director, Planning Commission or City Council as appropriate, shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate such findings.

<u>SECTION 6.</u> Section 20.100.830 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.830 Term

- A Special Use Permit may be time-conditioned, as appropriate, by the Director of Planning, the Planning Commission or City Council, as appropriate.
- B. If the use authorized by the Special Use Permit is discontinued for a period of twelve (12) months, the Special Use Permit will expire and the Special Use Permit will no longer be in effect.

<u>SECTION 7.</u> Section 20.100.920 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

#### 20.100.920 No Right to Issuance

- A. Pursuant to and in accordance with the provisions of this Part, the Director, or the Planning Commission on appeal, may issue Planned Development Permits. For projects which require certification of an environmental impact report for environmental clearance, the Planning Director or Planning Commission may issue Planned Development Permits only if the project as proposed includes all mitigation measures identified in the draft environmental impact report for the project as necessary to reduce the impacts of the project to a less than significant level. The City Council may issue Planned Development Permits for projects which require certification of an environmental impact report for environmental clearance and the project as proposed does not include all mitigation measures identified in the draft environmental impact report for the project as necessary to reduce the impacts of the project to a less than significant level.
- B. Under no circumstances shall any applicant have the right to have a Planned Development Permit issued for any property in a Planned Development District and nothing contained in this Part shall, in any event or under any

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circumstances, be deemed or construed to confer on any applicant the right to have a Planned Development Permit issued for any property.

<u>SECTION 8.</u> Section 20.100.940 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

#### 20.100.940 Findings

A. The Director, the Planning Commission on appeal, or the City Council as appropriate, may issue a Planned Development Permit only if all of the following findings are made:

- 1. The Planned Development Permit, as issued, furthers the policies of the General Plan;
- 2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development zoning of the property;
- 3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious;
- 4. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

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B. The Director, the Planning Commission on appeal or the City Council as appropriate shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate such findings.

<u>SECTION 9.</u> Section 20.100.950 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

#### 20.100.950 Amendment Findings

- A. Amendments may be granted at the discretion of the Director, Planning Commission on appeal, or City Council as appropriate upon a finding that the amendment does not negate any findings required by Section 20.100.940.
- B. Nothing in this section shall preclude the Director, Planning Commission or City Council from making reasonable modifications, additions or deletions to any condition in order to protect the public peace, health, safety, morals or welfare.

<u>SECTION 10.</u> Section 21.04.140 of Chapter 21.04 of Title 21 of the San José Municipal Code is hereby amended to read as follows:

#### 21.04.140 Appeals - General

- A. Any determination regarding the appropriate environmental clearance for a project made by the Director, Planning Commission or other non-elected decision-making body may be appealed to the City Council as set forth and described in this Section.
- B. Appeals of certifications of environmental impact reports shall follow and adhere to the procedures set forth in Chapter 21.07.

- C. Appeals of determinations on a negative declaration or a mitigated negative declaration shall follow and adhere to the provisions of Chapter 21.06.
- D. Appeals to City Council of environmental determinations that a project is not subject to CEQA, is exempt from CEQA under the provisions of CEQA or this Title, or should be approved in reliance on a previously certified Environmental Impact Report or adopted Negative Declaration shall follow and adhere to the provisions of this Section.
- E. Appeals of an environmental clearance determination allowed under this Section to the City Council shall proceed in accordance with and adhere to the following provisions and conditions:
  - 1. A person wishing to file a written appeal of a determination on environmental clearance with the Director under this Section shall file such appeal no later than 5:00 p.m. on the third (3rd) business day following the earliest to occur of the following events:
    - a. An action is taken on the environmental determination if that determination is made through or as a part of a public hearing; or
    - An action is taken after a public hearing on the project by a
      decision-making body making a decision on the project, which
      decision relied upon the determination on environmental clearance
      at issue; or
    - c. Commencement of the project if the project is undertaken without any public hearing.

- 2. The appeal shall be filed on a form prescribed by the Director. The appeal shall state with specificity the reasons that the environmental clearance determination should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA or this Title.
- 3. No appeal shall be considered unless it is based upon issues that were raised previously either orally or in writing to a recommending body or a decision-making body at or prior to a public hearing whenever the underlying project is considered at a public hearing.
- 4. The City Council shall conduct appeal hearings under this Chapter when the City is the lead agency.
- 5. Upon receipt of a timely appeal under this Section, the Director shall schedule a hearing and transmit a hearing notice for the appeal hearing before the City Council utilizing the processes and timelines set forth in Section 21.07.050.
- 6. The maker of the environmental decision being appealed shall prepare a report and recommendation on the appeal to the City Council and such report shall be provided to the appellant, applicant, and adjacent property owner(s) in the same manner provided for hearing notices pursuant to provisions of Section 21.07.050.
- 7. The appeal hearing before the City Council under this Section shall be a hearing de novo.
- 8. The City Council may elect to hear an appeal of the environmental clearance determination with a public hearing on a related underlying project.

- 9. Upon the conclusion of the appeal hearing under this Section, the City Council may find that the environmental clearance determination conforms to the requirements of CEQA and this Title or that the environmental clearance determination does not conform to the requirements of CEQA or this Title.
- 10. If the City Council finds that the environmental clearance determination comports with CEQA and this Title, it shall uphold the environmental clearance determination and may then immediately take action upon the related project. If the City Council finds that the environmental clearance determination does not comport with CEQA and this Title, it may require the Director to re-examine and process such environmental clearance determination and shall not take any approval actions on the related project.
- 11. All decisions of the City Council under this Section shall be final.

<u>SECTION 11.</u> Section 21.07.040 of Chapter 21.07 of Title 21 of the San José Municipal Code is hereby amended to read as follows:

### 21.07.040 Appeal of Director or Planning Commission Certification

A. Any person may file a written appeal of the Director's, Planning Commission's or other non- elected decision-making body's certification of a final EIR with the Director, no later than 5:00 p.m. on the third business day following the certification.

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B. The appeal shall be filed on a form prescribed by the Director. The appeal shall

state with specificity the reasons that the final EIR should not have been

certified.

C. No appeal shall be considered unless it is based on issues which were raised at

the public hearing before the Director or Planning Commission either orally or in

writing or in writing prior to the public hearing.

D. The City Council shall conduct appeal hearings.

SECTION 12. Section 21.07.050 of Chapter 21.07 of Title 21 of the San José

Municipal Code is hereby amended to read as follows:

21.07.050 Hearing Notice - Appeal

A. Upon receipt of a timely appeal, the Director shall schedule a hearing on the

appeal of the Director's, Planning Commission's or other decision making body's

certification of a final EIR before the City Council.

B. At least ten (10) days prior to the appeal hearing, written notice of the hearing

shall be placed in the mail to the person filing the appeal and the applicant.

SECTION 13. Section 21.07.060 of Chapter 21.07 of Title 21 of the San José

Municipal Code is hereby amended to read as follows:

21.07.060 Appeal Hearing

A. The certification appeal hearing of the City Council shall be de novo.

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- B. The City Council may hear the appeal of the certification concurrently with an appeal hearing on the project.
- C. Upon conclusion of the certification appeal hearing, the City Council may uphold, reverse or modify the Director's, Planning Commission's or other non-elected decision-making body's certification decision.
- D. If the City Council upholds the Director's, Planning Commission's or other nonelected decision-making body's certification of the final EIR, it may then immediately act on any appeal related to the project associated with the EIR.
- E. If the City Council does not uphold the Director's, Planning Commission's or other non-elected decision-making body's certification of the final EIR, the City Council may require that the EIR be revised and shall not take any action on the project.
- F. All decisions of the City Council shall be final.

<u>SECTION 14.</u> Section 21.07.080 of Chapter 21.07 of Title 21 of the San José Municipal Code is hereby amended to read as follows:

# 21.07.080 Request for Reconsideration of City Council's Certification as Initial Decision Making Body

A. Any interested person, prior to seeking judicial review on any of the grounds stated in 21.07.080.C of an EIR certification decision made by the City Council under Sections 21.07.020 and 21.07.030, shall file a petition for reconsideration with the City Clerk not later than three (3) business days following the date of the decision.

- B. Failure to file a petition for reconsideration constitutes a waiver of the right to request reconsideration and the City Council's decision shall be final for all purposes. Upon timely receipt of a petition for reconsideration, the City Clerk shall schedule a reconsideration hearing to be commenced by the City Council no later than sixty (60) days after the filing of the petition. At least ten days (10) prior to the reconsideration hearing, written notice of the hearing shall be placed in the mail to the person filing the request for reconsideration and the applicant. At the conclusion of the hearing for reconsideration, the City Council may affirm, reverse, or modify its original decision, and may adopt additional findings of fact based upon the evidence submitted in any and all hearings conducted by the City Council concerning the matter.
- C. A petition for reconsideration shall specify, in detail, each and every ground for reconsideration. Failure of a petition to specify any particular ground or grounds for reconsideration, precludes that particular omitted ground or grounds from being raised or litigated in a subsequent judicial proceeding.

The grounds for reconsideration are limited to the following:

- An offer of relevant evidence which was improperly excluded at the prior
   City Council certification hearing.
- 2. Proof of facts which demonstrate that the City Council proceeded without, or in excess, of its jurisdiction.
- Proof of facts which demonstrate that the City Council failed to provide a fair hearing.
- 4. Proof of facts which demonstrate that the City Council abused its discretion by:

- a. Not proceeding in a manner required by law; or
- Rendering a decision which was not supported by findings of fact;
   or
- c. Rendering a decision in which the findings of fact were not supported by the evidence.
- D. A petition for reconsideration is subject to a reconsideration fee as prescribed by resolution of the City Council. At the conclusion of the reconsideration hearing, the City Council may, in its sole discretion, refund all, or a portion, of the reconsideration fee to the petitioner.
- E. If a decision is subject to reconsideration, the initial decision shall not be final until the later of the fourth business day after the date of the initial decision or if a petition for reconsideration is timely filed, the request for reconsideration is withdrawn prior to the conclusion of the reconsideration hearing.

PASSED FOR PUBLICATION of title this 9th day of September, 2014, by the following vote:

AYES:

CHU, CONSTANT, HERRERA,

KALRA,

KHAMIS,

LICCARDO, NGUYEN, OLIVERIO, ROCHA; REED.

NOES:

CAMPOS.

ABSENT:

NONE.

DISQUALIFIED:

NONE.

**CHUCK REED** 

Mayor

ATTEST:

TONI J. TABER, CMC

City Clerk